

Application No. : 10/669,677
Filed : September 23, 2003

REMARKS

Claims 1-13 and 19-25 were pending in the application. By this paper, Applicant has
5 amended Claims 1, 12, 13, 19, 21, 23 and 25. Accordingly, Claims 1-13 and 19-25 are presented
for examination herein.

Information Disclosure Statement

Applicant files herewith an information disclosure statement and PTO Form 1449 citing
10 three (3) references for consideration by the Examiner.

§112 Rejections

Applicant respectfully traverses the Examiner's Section 112 (1) rejections of Claims 2
and 3 (lack of enablement) in their entirety.

15 Specifically, regarding Claim 2, Fig. 3b of the specification as filed clearly shows a lower
cap edge (see sidewall portion 318 of the cap 304 where it meets gap 319), the lower edge mating
substantially flush with a corresponding surface (opposite side of gap 319) of the body 308 so as to
substantially eliminate any gap there between. **Applicant fails to see how anyone of any skill
level, let alone one of ordinary skill, could not appreciate from Fig. 3b that the bottom surface
20 of the cap 304 mates with the portion 350 of the body to form a minimal ("substantially
eliminated") gap 319 when the cap is threaded on.**

The Examiner is also directed to the embodiment of Fig. 4b, wherein again a "substantially
eliminated" gap 419 is clearly shown.

Applicant further notes that its specification as filed is replete with discussion of this
25 feature. See, e.g., page 9, lines 6-9:

30 *"The cap is designed to be very low profile, and virtually eliminate any gap
between itself and the body that the animal might exploit. An exclusion ridge is
formed proximate to cap at the gap, thereby further frustrating attempts by the
animal to pry the cap off the body."* {Emphasis added}

Application No. : 10/669,677
Filed : September 23, 2003

See also, e.g., page 18, lines 20-23:

5 *"The outside pressure of the water during submergence also helps to seal the cap against the inner radial portion 350 of the body 302 (i.e., the annulus directly behind the ridge 316), as well as other portions of the body, thereby effectively mitigating further water intrusion."* {Emphasis added}

Hence, Applicant submits that there is no possible enablement issue here, since it clearly, explicitly, and unambiguously shows how to make and utilize this feature.

10 Regarding Claim 3, Applicant notes that Figs. 3b and 4b both clearly show the aforementioned body surface (i.e., on the one side of the gap 319/419), and the ridge feature 316/416.

Further, Applicant's specification as filed is replete with discussion of this feature. See, e.g., page 16, lines 18-24:

15 *"The locking elements 320a, 320b (Fig. 3c) are disposed on the cap 304 and body 302 respectively at an elevation and position such that the two elements 320 engage one another when the cap 304 is partly screwed onto the body 302, with sufficient threaded engagement to preclude easy cap removal. Specifically, the locking elements 320 are designed to engage when the cap is approximately 2/3 through its full rotational travel, thereby placing the lower edge of the cap sidewall 318 well below the elevation of the body ridge 318{sic}. Hence, when the cap 304 is not fully screwed on, the inter-cap gap 319 is not exposed to the animal."* {Emphasis added}

25 See also, e.g., page 9, lines 6-9:

30 *"The cap is designed to be very low profile, and virtually eliminate any gap between itself and the body that the animal might exploit. An exclusion ridge is formed proximate to cap at the gap, thereby further frustrating attempts by the animal to pry the cap off the body."* {Emphasis added}

See also, e.g., page 14, lines 26-30:

35 *"This ridge is disposed proximate to the base plane 317 of the threads 308, and projects substantially upward (i.e., in a direction substantially parallel to the plane of the threads 308 and the cap receiving portion 310. This ridge 316 advantageously blocks access to the underside of the cap sidewall 318, since the bear (or other animal) cannot get its claws anywhere near the cap sidewall edge, when the cap 304 is installed on the body 302."* {Emphasis added}

Application No. : 10/669,677
Filed : September 23, 2003

Hence, Applicant submits that the Examiner's Section 112(1) rejections are without merit, and requests that they be withdrawn immediately.

5 §102 Rejections

With respect to the Examiner's Section 102 rejections (par. 4-6 of the Office Action), Applicant provides the following remarks.

Claim 1 – By this paper, Applicant has amended Claim 1 to change the word “animal” to
10 “bear”, and to add limitations relating to the body and cap cooperating to exclude the bear from the interior volume.

Applicant submits that Opresco (U.S. 5,462,182) in no way teaches or suggests a bear
resistant container (let alone any other animal). Applicant submits that Opresco as taught or
fairly suggested cannot exclude a bear of any size or type, since Opresco in no way teaches or
15 suggests making any of the components of its device from anything but “polyethylene or other
thermoplastics”:

20 *“The cap 50 and container 10 are molded of polyethylene or other suitable thermoplastic materials common in the industry.”* Col. 3, lines 50-52.

As will be readily appreciated by anyone of ordinary skill, a bear (even small ones) would
literally crush such a thermoplastic bottle under its weight (a common technique used by bears to
gain access), thereby providing the bear access to the interior. Opresco makes no teaching of any
kind regarding making his invention robust enough to withstand a bear (or any other animal).
25 Opresco teaches only cap and bottle sizes which can be grasped by human hands, and all such
bottles will readily crush under the weight of even a small bear, regardless of whether rendered in
polyethylene or another thermoplastic.

Note that Opresco in no way teaches or suggests polycarbonate (Claim 5) or similar
material (specifically chosen by Applicant in one embodiment) that could withstand the weight
30 of a bear. **This is because Opresco is only considering humans in the design of his invention.**

Application No. : 10/669,677
Filed : September 23, 2003

In fact, Opresco *teaches away* from Applicant's claimed invention, since the invention of Opresco is entirely concerned with frustrating access by children (i.e., humans). See, e.g., the title and abstract of Opresco, as well as his specification. To the contrary, Applicant's claimed invention (which has also been amended to include limitations relating to the action of a human) is intended entirely to frustrate access by bears or other animals, yet readily allow access by humans, including at least some children.

Similar arguments apply to Bilani et al. (US 6,036,036), which (i) teaches or suggests nothing regarding exclusion of a bear or animal, and (ii) teaches away from Applicant's invention of Claim 1 for reasons similar to those for Opresco previously discussed ("*The child-resistant package (100) can be readily opened by an adult with a one-hand operation.*"; Bilani Abstract {Emphasis added}).

Similar arguments also apply to Stolz (US 5,884,815), which (i) teaches or suggests nothing regarding exclusion of a bear or animal, and (ii) teaches away from Applicant's invention of Claim 1 for reasons similar to those for Opresco previously discussed ("*As a rule a single latch connection will suffice for child protection. The two diametrically opposed latches that form the connection will increase, however, the reliability and facilitate the cancellation of the child protection by adults*" Col. 3, lines 26-29{Emphasis added}).

Hence, Applicant submits that Claim 1 as amended herein is neither anticipated nor rendered obvious by any of the foregoing references, since none fairly teach or suggest the exclusion of bears, nor purposeful access by a human to include at least some children.

Claims 8, 12 and 22 – Applicant respectfully traverses the Examiner's Section 102 rejection of Claims 8, 12 and 22 over Opresco, Stolz and/or Bilani on the merits.

Specifically, the Examiner has not provided, nor does any of the foregoing references teach, a container body adapted to withstand forces exerted by a bear. As previously noted, none of these references even remotely teaches or suggests purposeful animal exclusion, let alone exclusion of a bear.

Applicant submits that none of the devices of Opresco, Stolz and/or Bilani comprise a container body purposely adapted to withstand forces exerted by a bear, as now recited in Claims

Application No. : 10/669,677
Filed : September 23, 2003

8, 12 and 22. Applicant request that the Examiner specifically cite to portions of each of these three references to support his contention in this respect.

Applicant further notes that these limitations of Claims 8, 12 and 22 are not in the preamble of the claim, and hence must be afforded patentable weight.

5

Claims 13 and 19 – Applicant has herein amended Claims 13 and 19 to include limitations relating to the recited cap being configured to be removed by a human using two hands. Support for this amendment is found in numerous places throughout Applicant's specification, including at page 16, lines 27-30 ("*This (albeit minimal) distortion is accomplished simply through grasping the cap in one's hands, the nylon material being sufficiently pliable to flex enough to move the two elements 320a, 320b relative to one another in the radial dimension...*")

Applicant submits that none of the devices of Opresco, Stolz and/or Bilani teach or suggest use of tow hands, as now recited in Claims 13 and 19. In fact, Applicant submits that each of these references clearly teach away from Applicant's claimed inventions, since each teach a bottle or container adapted have the cap removed by one hand only. Specifically, Opresco states at, Col. 5, lines 5-10:

To remove the cap 50, the container 10 is held in one hand with a finger or thumb deflecting the protrusion 70 out of engagement with the recess 36 while the other hand rotates the cap 50 in a counter-clockwise direction, while viewed from the top, until the protrusion 70 is rotated beyond the recess 36. {Emphasis added}

Bilani states, at Col 2, lines 3-7:

"It is therefore an object of the present invention to provide a child resistant package which is resistant to opening by the majority of children but which, at the same time, can readily be opened by adults without the need of a two hand operation." {Emphasis added}

Similarly, Stolz shows an apparatus with a cap clearly meant to be gripped with one hand, and in no way teaches or suggests any use of two hands or methodology to remove the cap.

Claim 21 – By this paper, Applicant has amended Claim 21 to recite a molded polycarbonate body and a nylon cap. Support for this amendment is replete throughout Applicant's specification (see, e.g., Claim 5). Applicant submits that none of the cited art teaches or suggests use of polycarbonate body and a nylon cap. Applicant notes that this

Application No. : 10/669,677
Filed : September 23, 2003

combination was specifically chosen for the embodiment of Claim 21, so as to (i) provide adequate strength to resist destruction of the body by the recited bear (polycarbonate), and (ii) allow sufficient flexibility and yet rigidity to accommodate distortions of the polycarbonate body without popping off (cap).

5 Hence, even if *arguendo* any of the cited references teach polycarbonate or nylon, none teach the combination, since none of the cited art had as its aim to withstand a bear and to prevent the cap from popping off. Applicant's amended Claim 21 can therefore in no way be considered anticipated or obvious based on these prior art references.

10 **Claim 23** – By this paper, Applicant has amended Claim 23 to include limitations relating to the aperture being nearly the full diameter of the body at its widest point. Support for this amendment is found at, *inter alia*, page 14, lines 13-15 of the specification as filed. None of the cited art teaches or suggests such functionality. In fact, each of the cited references teach away from such functionality, since as previously discussed, each of the foregoing references
15 teach a container cap that is designed to grasped in one hand. By making the aperture nearly as wide as the width of the container (bottle), such grasping would be increasingly frustrated. Such a problem is not an issue with Applicant's invention of Claim 23, since the cap is purposely designed to be grasped with two hands.

20 Applicant's amended Claim 23 can therefore in no way be considered anticipated or obvious based on these prior art references.

Claim 25 - By this paper, Applicant has amended Claim 25 to include limitations relating to the plurality of surface elements being adapted to provide retention of one or more restraining devices. Applicant respectfully submits that none of the cited art even remotely teaches such
25 limitations. None of these references refer to surface elements being used in any way to restrain the apparatus, or a restraining device.

Applicant's amended Claim 25 can therefore in no way be considered anticipated or obvious based on these prior art references.

30 *Other Remarks*

Applicant hereby specifically reserves its rights of appeal, as well as the right to prosecute claims of different or broader scope in a continuation or divisional application.

Application No. : 10/669,677
Filed : September 23, 2003

Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention and responding to the aforementioned restriction election, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to
5 patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.

10 If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

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